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IN THE
COURT OF APPEALS OF INDIANA

SARAH PONSFORD,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 88A01-0603-JV-100
	)	
MICHAEL T. CHASTAIN,	)	
	)	
Appellee-Petitioner,	)	

APPEAL FROM THE WASHINGTON CIRCUIT COURT
The Honorable Robert Bennett, Judge
Cause No. 88C01-0404-JP-043

October 13, 2006

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Judge

Appellant-respondent Sarah Ponsford appeals the trial court's judgment entered in favor of appellee-petitioner Michael T. Chastain with regard to issues involving their minor child, C.D. Specifically, Ponsford claims that the trial court erred in ordering a change of C.D.'s surname to "Chastain" and that it was error to grant visitation to Chastain in accordance with the Indiana Parenting Guidelines. Ponsford also claims that the trial court abused its discretion in adopting a child support order that Chastain's counsel submitted that did not include a support calculation worksheet, and that it was error to award Chastain a credit in the amount of $1000 toward his child support arrearage. Concluding that we are unable to determine whether Chastain's child support obligation was properly calculated, we are compelled to remand this cause to the trial court with instructions that it obtain a child support worksheet signed by both parties or for the trial court to make findings regarding the parties' gross income pursuant to Guideline 3(B)(1), and to recalculate Chastain's child support obligation. In all other respects, the judgment of the trial court is affirmed.

FACTS

Ponsford and Chastain are the parents of C.D., who was born out of wedlock on May 21, 2003. On April 12, 2004, Chastain filed a petition to establish paternity and a motion to compel support. After several continuances, a hearing was held on October 31, 2005, at which time Ponsford filed a child support worksheet and a proposed arrearage calculation. Chastain admitted paternity, sought visitation, and requested that the child's name be changed to "Chastain." Tr. p. 4.

Chastain testified that he was unemployed but had most recently worked part-time for a guttering service two or three days per week at ten dollars per hour. Chastain also requested parenting time with C.D. on Sunday afternoons at Ponsford's parents' residence from 1:00 p.m. to 5:00 p.m. Although Chastain did not have a driver's license, he informed the trial court that a licensed driver would be available to pick up and drop off C.D. if Chastain was awarded visitation.

Chastain testified that he had made some payments totaling $1000 directly to Ponsford for C.D.'s benefit. Chastain had previously exercised visitation with C.D. at Ponsford's father's farm. The evidence also showed that on at least one occasion, the police were called when Chastain was at Ponsford's residence. Ponsford testified that she was concerned with Chastain's anger problems and requested that Chastain's visitation be supervised. Ponsford also testified that she was concerned with Chastain's use of alcohol or drugs and the facts surrounding Chastain's criminal charges in 2001 which she believed were battery, criminal confinement, residential entry, burglary, and criminal mischief, which involved her as the victim. Ponsford acknowledged that she has learned to deal with Chastain's "threats" even though she has not had a relationship with him for nearly three years. Tr. p. 32-33.

Ponsford admitted receiving approximately $1000 from Chastain that was used toward the support of C.D. She offered evidence that her weekly gross income was $165 per week at her parents' dairy farm, along with a claim that she paid $130 per month in health insurance premiums for C.D. Ponsford also testified regarding the proposed child support arrearage amount, her request that Chastain pay $92 per week in child support, and a

determination of a child support arrearage retroactive to the birth of C.D., less the $1000 that Chastain had paid directly to her.

Ponsford objected to the proposed name change of C.D., claiming that changing his surname to "Chastain" would be identifiable by others and detrimental to C.D. because of Chastain's prior conduct and brushes with the law. Ponsord also requested that the trial court order a specific "phase-in" period of supervised visitation at her parents' residence with the issue to be reviewed in a few months to ensure that there would be no further incidents of violence.

On January 9, 2006, the trial court faxed certain findings to Chastain's counsel that included, among other things, a finding that child support should be recalculated "using mother's income at $165.00 and father's at $280.00." Appellant's App. p. 4. The findings also stated that support should be retroactive to the date that the petition was filed and that Chastain should receive a credit in the amount of $1000 for support that he had paid to Ponsford.

Thereafter, on January 26, 2006, the trial court entered the following order, which had been submitted by Chastain's counsel:

> It is ORDERED that support shall be $48.84 each week retroactive to April 12, 2004. The arrearage is determined to be $3,444.44 after crediting the $1,000 herein. The father shall pay . . . $48.84 each week beginning Friday, January 13, 2006 plus $10 each week to be applied to the arrearage until fully paid. . . . There shall be a credit of $1,000 to reduce the support arrearage for payments made by the father, said arrearage is stated above.
>
> It is ORDERED that the father, Michael Chastain shall have visitation with the minor child according to Parenting Time Guidelines. It is Ordered that visitation shall be supervised at the time of the mother's parents for six

> months from the date of this order with a review on support and visitation to be held in 180 days.
>
> It is ORDERED that the child's last name shall be changed to [C.] Chastain.

Id. at 5.

Ponsford now appeals from this order.

I. Name Change

Ponsford first claims that the trial court erred in allowing C.D.'s surname to be changed to "Chastain." Specifically, Ponsford contends that such an order was erroneous because Chastain failed to show that changing C.D.'s name was in the child's best interests.

In resolving this issue, we first note that upon a determination of paternity, both the mother and father enjoy potentially equal legal rights as parents with regard to issues of support, custody, and visitation. Ind. Code § 34-28-2-2; In re the Paternity of Tibbitts, 668 N.E.2d 1266, 1267 (Ind. Ct. App. 1996). We have applied this notion of equality to the naming of the child. Matter of J.N.H., 659 N.E.2d 644, 646 (Ind. Ct. App. 1995). When one legal parent contests a petition filed by the other to change the name of their minor child and paternity has already been established, the trial court must determine whether a name change is in the child's best interest. Garrison v. Knauss, 637 N.E.2d 160, 162 (Ind. Ct. App. 1994).

We review the trial court's order in such cases under an abuse of discretion standard. Id. An abuse of discretion will be found only where the decision is clearly against the logic and effect of the facts and circumstances before the court or the court has misinterpreted the law. Id. We will not reweigh the evidence and we will view the evidence in the light most favorable to the appellee. D.R.S. v. R.S.H., 412 N.E.2d 1257, 1266 (Ind. Ct. App.1980). It

is generally not an abuse of discretion for the child to receive the father's surname when there is evidence that the natural father acknowledges and supports his child that is born out of wedlock, takes an interest in the child's welfare, and there are no factors that would make taking the father's name against the child's best interests. Tibbitts, 668 N.E.2d at 1269.

In this case, the record shows that Chastain paid support directly to Ponsford prior to the determination of paternity. Tr. p. 22, 37. He exercised visitation with C.D. and was actively involved in his life. Id. at 16. Additionally, the trial court is now affording Chastain visitation under the Indiana Parenting Time Guidelines, and he continues to show an interest in C.D.'s life. Moreover, inasmuch as C.D. is only two years old, there has been no showing that C.D. has—or would have become—reliant on his former surname. Although Ponsford points to various domestic incidents that occurred with Chastain, we do not see how such evidence would impact the trial court's decision to change C.D.'s surname. Thus, we conclude that the trial court did not err in granting Chastain's request.

II. Visitation

Ponsford next claims that the trial court abused its discretion in granting visitation to Chastain under the Indiana Parenting Time Guidelines. Specifically, Ponsford argues that the trial court's order was erroneous because the trial court did not specifically allow for a "phase in" period of visitation in light of Chastain's prior behavior. Appellant's Br. p. 12.

In resolving this issue, we initially observe that in all visitation controversies, courts are required to give foremost consideration to the best interests of the child. Marlow v.

Marlow, 702 N.E.2d 733, 735 (Ind. Ct. App. 1998). In accordance with Indiana Code section 31-17-4-2:

> the court may modify an order granting or denying parenting time rights whenever modification would serve the best interests of the child. However, the court shall not restrict a parent's parenting time rights unless the court finds that the parenting time might endanger the child's physical health or significantly impair the child's emotional development.

We also note that when reviewing the trial court's resolution of the visitation issue, we reverse only when the trial court manifestly abused its discretion. Marlow, 702 N.E.2d at 735. Id. If the record reveals a rational basis supporting the trial court's determination, no abuse of discretion occurred. Id. We will not reweigh evidence or reassess the credibility of witnesses. Id.

Here, Ponsford challenges the application of the Parenting Time Guidelines in light of the following commentaries under those guidelines:

> 1. Generally. These Guidelines are applicable to all child custody situations, including paternity cases and cases involving joint legal custody where one person has primary physical custody. However, they are not applicable to situations involving family violence, substance abuse, risk of flight with a child, or any other circumstances the court reasonably believes endanger the child's physical health or safety, or significantly impair the child's emotional development.
>
> 2. Presumption. There is a presumption that the Indiana Parenting Time Guidelines are applicable in all cases covered by these guidelines. Any deviation from these Guidelines by either the parties or the court must be accompanied by a written explanation indicating why the deviation is necessary or appropriate in the case.

Ind. Parenting Time Guidelines, Preamble, Scope of Application, 1, 2.

Another Commentary to the Parenting Guidelines provides as follows:

> 2. Lack of Contact. Where there is a significant lack of contact between a parent and a child, there may be no bond, or emotional connection, between the parent and the child. It is recommended that scheduled parenting time be "phased in" to permit the parent and child to adjust to their situation.

Ind. Parent. Time G. II (2).

Here, Ponsford claims that the trial court abused its discretion in not ordering a specific "phase in" period of visitation with regard to Chastain and C.D. In essence, she claims that the evidence clearly established that Chastain was not a fit and proper person to care for C.D.

Notwithstanding these claims, the trial court heard and considered all of the evidence relating to this matter at the hearing on October 31, 2005. It weighed the evidence and ultimately determined that Chastain should be afforded supervised parenting time at the home of Ponsford's parents in accordance with the guidelines. Appellant's App. p. 9. Although Ponsford specifically directs us to the "lack of contact" commentary quoted above, she has made no showing that there was any lack of an emotional connection between Chastain and C.D. that might justify a particular "phase-in" period of visitation as suggested by the Commentaries. Moreover, the trial court did order a review of the supervised visitation and support matters in six months. That said, it is apparent to us that the trial court was, in fact, "phasing in" Chastain's visitation with C.D. in light of the 180 days of supervised visitation that was ordered along with the subsequent review of that issue. Thus, we decline to

conclude that the trial court's order with respect to parenting time amounted to an abuse of discretion.

III. Child Support Order

Ponsford next contends that the trial court erred in its calculation of child support. Specifically, Ponsford asserts that the trial court's adoption of the proposed order that Chastain's counsel submitted was erroneous because it did not include an explanation or determination of either the child support or arrearage.

In resolving this issue, we initially observe that decisions regarding child support are generally left to the discretion of the trial court. Sebastian v. Sebastian, 798 N.E.2d 224, 227 (Ind. Ct. App. 2003). Indiana Child Support Guideline 3(B)(1) provides that:

> In all cases, a copy of the worksheet which accompanies these Guidelines shall be completed and filed with the court when the court is asked to order support. This includes cases in which agreed orders are submitted. Worksheets shall be signed by both parties, not their counsel, under penalties for perjury.

(Emphasis added).

The Child Support Guidelines also provide that:

> [t]he weekly cost of health insurance premiums for the child(ren) should be added to the basic obligation whenever either parent actually incurs the premium expense or a portion of the expense.

Child. Supp. G. 3(E)(2). And, pursuant to the "Additional Commentary" under Guideline 6:

> Parenting Time Credit is not automatic. The court should determine if application of the credit will jeopardize a parent's ability to support the child(ren). If such is the case, the court should consider deviation from the credit. The Parenting Time Credit is earned by performing parental obligations as scheduled and is an advancement of weekly credit. The granting

of the credit is based on the expectation the parties will comply with a parenting time order.

Relevant to our discussion here is Pryor v. Bostwick, 818 N.E.2d 6 (Ind. Ct. App. 2004). In Pryor, the evidence showed that neither party had submitted a child support worksheet to the trial court prior to the trial court's order that the father of the child was to pay $30 per week. Further, the trial court did not enter findings or complete its own child support worksheet to justify its order. Id. at 12. Hence, we determined that the trial court abused its discretion when it ordered Father to pay $30 per week in child support. We also noted that while the mother eventually submitted her own child support worksheet, the father did not sign it and did not submit his own worksheet. In light of those circumstances, we remanded the case to the trial court with instructions that it obtain a child support worksheet signed by both parties pursuant to Guideline 3(B)(1) to recalculate the father's child support obligation. Id.

As in Pryor, here, Chastain did not submit a child support worksheet at the October 31, 2005, hearing. Moreover, Chastain's counsel did not attach a worksheet to the order presented to the trial court subsequent to the findings that were made on January 9, 2006.[1] Additionally, no findings were made with regard to the cost of the $130 monthly health insurance premiums for C.D. that Ponsford purportedly paid, and no determination was made as to what, if any, parenting time credit Chastain was to receive. As a result, we must

[1] While Ponsford did not present a signed and verified support worksheet at trial, prior to trial she did file a proposed arrearage calculation with an accompanying child support worksheet from which she testified under oath as to the accuracy of both the proposed arrearage and child support worksheet. Tr. p. 40-41.

conclude that the trial court erred with respect to Chastain's child support obligation. See Dye v. Young, 655 N.E.2d 549, 550 (Ind. Ct. App. 1995) (observing that this court was unable to determine whether the trial court complied with the child support guidelines because it did not make findings or complete a child support worksheet). Thus, we are compelled to remand this case to the trial court with instructions that it obtain a child support worksheet signed by both parties in accordance with Guideline 3(B)(1) and to recalculate Chastain's child support obligation.

IV. Credit for Arrearage

Finally, Ponsford argues that the trial court abused its discretion in awarding Chastain a $1000 credit toward his child support arrearage. Specifically, she claims that it was error for the trial court "to award a credit to an arrearage calculation that was made using a retroactive obligation to the date of the petition rather than the date of C.D.'s birth." Appellant's Br. p. 22.

In resolving this issue, we note that Indiana Code section 31-14-11-5 provides that a child support order: "(1) may include the period dating from the birth of the child; and (2) must include the period dating from the filing of the paternity action." Statutory interpretation is a matter of law to be determined de novo by this court. C.A.M. ex rel. Robles v. Miner, 835 N.E.2d 602, 606 (Ind. Ct. App. 2005). We shall construe and interpret a statute only if it is ambiguous. Id. A statute that is clear and unambiguous must be read to mean what it plainly expresses, and its plain and obvious meaning may not be enlarged or restricted. Id.

In this case, the trial court found an arrearage in the amount of "$3,444.44 after crediting the $1,000 herein." Appellant's App. p. 5. Ponsford admitted at the hearing that Chastain "has given me a little bit of money along the way, . . . approximately one thousand dollars." Tr. p. 37. Although Ponsford contends that she "agreed to a credit toward a support arrearage that was calculated from the birth of the child . . ., rather than a credit from the date of the father's petition," the provisions of Indiana Code section 31-14-11-5 permitted the trial court to award a credit to an arrearage calculation that was made using a retroactive obligation to the date of the petition rather than the date of birth. Even so, Ponsford acknowledged at the hearing that Chastain had paid $1000 toward C.D.'s support. In light of these circumstances, we conclude that the trial court did not err in granting Chastain the $1000 credit that he had paid to Ponsford toward the arrearage amount.

CONCLUSION

In light of our discussion above, we conclude that the trial court did not err in ordering C.D.'s surname changed to "Chastain." We also note that visitation was properly afforded to Chastain in accordance with the Indiana Parenting Time Guidelines and that the trial court correctly awarded Chastain a $1000 credit toward his child support arrearage. However, because we are unable to determine whether Chastain's child support obligation was properly calculated, we are compelled to remand this cause to the trial court with instructions that it obtain a child support worksheet signed by both parties or for the trial court to make findings regarding the parties' gross income pursuant to Guideline 3(B)(1), and to recalculate Chastain's child support obligation.

The judgment of the trial court is affirmed in part, reversed in part, and remanded with instructions.

VAIDIK, J., and CRONE, J., concur.